

§ 433.322

period that includes the date on which the collection occurs.

(f) *Bankruptcy petition denied.* If a provider's petition for bankruptcy is denied in Federal court, the agency must credit CMS with the Federal share of the overpayment on the later of—

(1) The Form CMS-64 submission due to CMS immediately following the date of the decision of the court; or

(2) The Form CMS-64 submission for the quarter in which the 60-day period following discovery of the overpayment ends.

(g) *Reclaim of refunds.* (1) If a provider is determined bankrupt or out of business under this section after the 60-day period following discovery of the overpayment ends and the State has not been able to make complete recovery, the agency may reclaim the amount of the Federal share of any unrecovered overpayment amount previously refunded to CMS. CMS allows the reclaim of a refund by the agency if the agency submits to CMS documentation that it has made reasonable efforts to obtain recovery.

(2) If the agency reclaims a refund of the Federal share of an overpayment—

(i) In bankruptcy cases, the agency must submit to CMS a statement of its efforts to recover the overpayment during the period before the petition for bankruptcy was filed; and

(ii) In out-of-business cases, the agency must submit to CMS a statement of its efforts to locate the provider and its assets and to recover the overpayment during any period before the provider is found to be out of business in accordance with § 433.318.

(h) *Supporting reports.* The agency must report the following information to support each Quarterly Statement of Expenditures Form CMS-64:

(1) Amounts of overpayments not collected during the quarter but refunded because of the expiration of the 60-day period following discovery;

(2) Upward and downward adjustments to amounts credited in previous quarters;

(3) Amounts of overpayments collected under court-approved discharges of bankruptcy;

(4) Amounts of previously reported overpayments to providers certified as

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bankrupt or out of business during the quarter; and

(5) Amounts of overpayments previously credited and reclaimed by the State.

§ 433.322 Maintenance of records.

The Medicaid agency must maintain a separate record of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR part 74, subpart D.

PART 434—CONTRACTS

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AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

SOURCE: 48 FR 54020, Nov. 30, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 434.1 Basis and scope.

(a) *Statutory basis.* This part is based on section 1902(a)(4) of the Act, which requires that the State plan provide for methods of administration that the

Secretary finds necessary for the proper and efficient operation of the plan.

(b) *Scope.* This part sets forth the requirements for contracts with certain organizations for furnishing Medicaid services or processing or paying Medicaid claims, or enhancing the agency's capability for effective administration of the program.

[48 FR 54020, Nov. 30, 1983; 48 FR 55128, Dec. 9, 1983, as amended at 67 FR 41095, June 14, 2002]

§ 434.2 Definitions.

As used in this part, unless the context indicates otherwise—

Fiscal agent means an entity that processes or pays vendor claims for the agency.

Health care projects grant center means an entity that—

(a) Is supported in whole or in part by Federal project grant financial assistance; and

(b) Provides or arranges for medical services to recipients.

Private nonmedical institution means an institution (such as a child-care facility or a maternity home) that—

(a) Is not, as a matter of regular business, a health insuring organization or a community health care center;

(b) Provides medical care to its residents through contracts or other arrangements with medical providers; and

(c) Receives capitation payments from the Medicaid agency, under a nonrisk contract, for its residents who are eligible for Medicaid.

Professional management service or consultant firm means a firm that performs management services such as auditing or staff training, or carries out studies or provides consultation aimed at improving State Medicaid operations, for example, with respect to reimbursement formulas or accounting systems.

[48 FR 54020, Nov. 30, 1983; 48 FR 55128, Dec. 9, 1983, as amended at 52 FR 22322, June 11, 1987; 55 FR 51295, Dec. 13, 1990; 67 FR 41095, June 14, 2002]

§ 434.4 State plan requirement.

If the State plan provides for contracts of the types covered by this part, the plan must also provide for meeting the applicable requirements of this part.

§ 434.6 General requirements for all contracts and subcontracts.

(a) *Contracts.* All contracts under this part must—

(1) Include provisions that define a sound and complete procurement contract, as required by 45 CFR part 74;

(2) Identify the population covered by the contract;

(3) Specify any procedures for enrollment or reenrollment of the covered population;

(4) Specify the amount, duration, and scope of medical services to be provided or paid for;

(5) Provide that the agency and HHS may evaluate through inspection or other means, the quality, appropriateness and timeliness of services performed under the contract;

(6) Specify procedures and criteria for terminating the contract, including a requirement that the contractor promptly supply all information necessary for the reimbursement of any outstanding Medicaid claims;

(7) Provide that the contractor maintains an appropriate record system for services to enrolled recipients;

(8) Provide that the contractor safeguards information about recipients as required by part 431, subpart F of this chapter;

(9) Specify any activities to be performed by the contractor that are related to third party liability requirements in part 433, subpart D of this chapter;

(10) Specify which functions may be subcontracted; and

(11) Provide that any subcontracts meet the requirements of paragraph (b) of this section.

(b) *Subcontracts.* All subcontracts must be in writing and fulfill the requirements of this part that are appropriate to the service or activity delegated under the subcontract.

(c) *Continued responsibility of contractor.* No subcontract terminates the legal responsibility of the contractor to the agency to assure that all activities under the contract are carried out.

[48 FR 54020, Nov. 30, 1983, as amended at 67 FR 41095, June 14, 2002]